

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government – The bill limits access to patient records.

B. EFFECT OF PROPOSED CHANGES:

HB 943 creates s. 893.056, F.S., to provide a public records exemption for certain information in the proposed electronic monitoring system of Schedule II-IV prescription drugs. The exempt information in the proposed electronic monitoring system is:

- Personal identifying information of a patient;
- A practitioner as defined in s. 893.02, F.S.; and
- A pharmacist as defined in s. 465.003, F.S.

The bill provides that the exempt records may be disclosed to:

- The executive director, or a board investigator as designated by each board of the regulatory boards of the health care practitioners;
- The Agency for Health Care Administration when it has initiated a review of specific identifiers of Medicaid fraud and abuse;
- A criminal justice agency that enforces laws relating to drugs and that is engaged in a specific investigation involving a violation of law;
- A practitioner defined under chapter 893, F.S., and an employee of the practitioner, who requests such information and certifies that it is necessary to provide medical treatment to a current patient, subject to the patient's written consent;
- A pharmacist licensed in this state, or a pharmacy intern or pharmacy technician designated by the pharmacists, who requests information and certifies that it is to be used to dispense controlled substances to a current patient; and
- The patient who is identified in the record, upon a written request, for the purpose of verifying that information.

The bill provides for future review and repeal of the exemption on October 2, 2009, pursuant to the Open Government Sunset Review Act of 1995, s. 119.15, F.S. It also provides a statement of public necessity and provides an effective date.

The effective date of the bill is July 1, 2006, and is linked to the passage of HB 913.

HB 913

HB 913 increases the regulation of prescription of Schedule II, III, and IV drugs.

The bill requires the Department of Health to contract for the design, establishment, and maintenance of an electronic prescription monitoring database by June 30, 2007. The database will include prescription of Schedule II, III, and IV drugs prescribed by health care practitioners in Florida. The bill provides for exemptions from reporting. Unless reenacted by the Legislature, this portion of the bill will sunset October 2, 2009. HB 943 is linked to HB 913 and provides a public records exemption for the information in the monitoring database.

The bill requires the development and adoption of a counterfeit-resistant prescription blank to be used voluntarily by physicians to prescribe Schedule II, Schedule III, or Schedule IV controlled substances.

The bill prohibits the sale, manufacture, alteration, delivery, uttering, or possession of counterfeit-resistant prescription blanks. The bill provides additional requirements for the dispensing of a controlled substance.

Further, the bill provides that if a person dies of an apparent overdose, a law enforcement agency must prepare a report identifying each prescribed controlled substance listed in Schedule II, III or IV that is found on or near the deceased or among the deceased's possessions.

C. SECTION DIRECTORY:

Section 1. – Creates s. 893.056, F.S., to create a public records exemption for the electronic monitoring system for prescription of controlled substances listed in Schedules II-IV.

Section 2. – Provides a statement of public necessity.

Section 3. – Provides an effective date of July 1, 2006 contingent on passage of HB 943.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

Article I, s. 24(c) of the Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, the bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records and Public Meetings Laws

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Article I, s. 24(b), Florida Constitution, sets forth the state's public policy regarding access to government meetings. The section requires all meetings of the executive branch and local government be open and noticed to the public.

The Legislature may, however, provide by general law for the exemption of records and meetings from the requirements of Article I, s. 24, Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records and meetings is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record, and s. 286.011, F.S., requires that all state, county, or municipal meetings be open and noticed to the public. Furthermore, the Open Government Sunset Review Act of 1995¹ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or,
- Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 4, 2006 the Health Care Regulation Committee adopted one amendment and reported the bill favorably. The amendment

- Specifies the electronic database will be held by a private company in contract with the Department of Health;
- Provides that the information in the database may be disclosed to health care practitioner regulatory boards; and
- Shortens the repeal date to October 2, 2009 (in lieu of October 2, 2011).

The analysis is drafted to the committee substitute.

¹ Section 119.15, F.S.